

## Message Text

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ACTION AID-31

INFO OCT-01 EA-11 ISO-00 JUSE-00 L-03 DRC-01 RSC-01 /048 W

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P 190933Z APR 74

FM AMEMBASSY SAIGON

TO SECSTATE WASHDC PRIORITY 3870

UNCLAS SAIGON 5102

E.O. 11652: N/A

TAGS: CGEN

SUBJECT:DEPOSITIONS - ESCALATION CLAUSES CASES

REF: STATE 48753

PASS JUSTICE JAMES F. MEWOW, AID/CG LUDACER

1. U.S. CONSUL HELD FIRST SESSION APRIL 19, 1974 FOR TAKING DEPOSITIONS. ECOUNTERED SUBSTANTIVE DIFFICUTIES WITH EYTAN PLAINTIFF'S COUNSEL AT OUTSET. REQUIRE GUIDANCE FOR PURPOSES GOING ORWARD.

2. IN SETTING UP SESSION JUSTIC OFFERED STIPULATION NOTING THAT THESE WOULD BE DISCOVERY DEPOSITIONS ON NOTICE PURSUAN TO 22 CFR 92:55. EYTAN RESPONDED THAT E DOES NOT INTEND TO LIMIT DEPOSITIONS TO DISCOVERY BUT INTENDS TO DEVELOP EVIDEN- TIRY DEPOSITIONS TO BE USED IN EVIDENCE IN LIEU F BRINGING WITNESSE TO STATES. USG AND CONSUL TAKING DEPOSITION POINTED OUT THIS WOULD CHANGE CHARACTER OF DEPOSITIONS WHICH WOULD NO LONGER BE FOR DICOVERY ONLY AS SET OUT IN STATE 48753 PARA 5. FURTHER CONSUL CANNOT PASS ON QUESTION WHETHER EVIDENTIARY PURPOSE WOULD BE ADMISSILE BUT IN VIEW OF PLAITIFF'S CHANGING CHARA- CTER OF DEPOSITIO IT IS NECESSARY TO POINT OUT THAT FEES FOR CONSULAR SERVICES AT \$85 (TARIFF OF FOREIGN SERVICE FEES ITEM 5) PER EIGHT-HOUR DY WOULD HAVE TO BE PAD BY PLAINTIFFS AND APPROXIMATELY \$500 DEPSITED IN ADVANCE OR WEEKS TESTIMONY OF FIVE AND ONE-HALF DAS. EYTAN STRONGLY BJECTED STATING WOULD ONLY PAY IF COURT FINDS MUST DO SO IN CONNECTION WITH ACCEPTING DEPOSITION FOR UNCLASSIFIED UNCLASSIFIED

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EVEIDENTIARY PURPOSES.

. IN VIEW OF 22 U.S.C. 1195 AND CFR EE PROVISIONS EMBASSY HOLDS VIEW IT REQUIRED TO COLLECT FEES FROM PLAINTIFFS AND CANNOT PROCEED BY WAIVING OR DEFERRING FEES. EMBASSY WOULD PROPOSE AND CONSUL HAD SO INDICATED TO RECEIVE FEES FROM PLAINTIFFS UNDER RESERVE AND PROTEST SUBJECT TO REFUND UPON RULING BY STATE THAT PLAINTIFF NOT REQUIRED TO PAY FEES. THIS DISTINCT FROM ISSUE OF FURNISHING COPY OF TRANSCRIPT.

4. PARTIES AGREED RATHER TO TAKE RECORD OF DEPOSITIONS ON TAPES WHICH WILL BE TRANSCRIBED AND MADE INTO ENGLISH QUESTION AND ANSWER RECORD BY CONSUL. STIPULATION OF PARTIES FOR TAPE RECORD AGREE TO IN CONTEMPLATION OF 22 CFR 92:56 (B).

5. EYTAN REQUESTED HE BE FURNISHED COPY OF TAPES BEFORE THEY ARE TRANSCRIBED. EMBASSY WOULD PREFER FOR PURPOSES OF MEETING VARIOUS PROVISIONS OF CFR TO HAVE ONE SET OF TAPES TAKEN AND PRESERVED IN POSSESSION OF CONSUL TAKING DEPOSITIONS. THAT PARTIES BE REQUESTED TO WAIVE EXAMINATIONS AND WITNESSES CERTIFICATIONS CONTEMPLATED IN 22 CFR 92:61 BECAUSE WOULD REQUIRE PRESENCE AND RECALL OF DEponents AND COUNSEL AT TIME TRANSCRIPT COMPLETE. CONSUL WOULD SEND TAPES UNDER SEAL TOGETHER WITH CERTIFIED TRANSCRIPT TO COURT TO BE FILED PURSUANT 92:64. IN EVENT OF QUESTION CONCERNING TRANSCRIPT IT COULD BE CHECKED AGAINST TAPES IN POSSESSION OF COURT. FIND NO BASIS NOR SUITABLE MEANS FOR FURNISHING OPPOSING PARTIES WITH COPIES OF TAPES.

6. REQUIRE PRIORITY RESPONSE ASAP INDICATING POSITION EMBASSY SHOULD FOLLOW RE(2) ABOVE AND WHETHER DEPARTMENT CONCURS IN PROCEDURE FORESEEN UNDER (4).

7. FYI EYTAN WALKED OUT ON SESSION SAYING HE WOULD WAIT UNTIL TUESDAY TO LEARN DEPARTMENT'S VIEWS ON WHETHER HE IS REQUIRED TO PAY FEES.  
MARTIN

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## Message Attributes

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**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
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**Review Authority:** garlanwa  
**Review Comment:** n/a  
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**Review Date:** 10 SEP 2002  
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